

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF and UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

**WALEED HAMED, WAHEED HAMED,  
MUFEED HAMED, HISHAM HAMED, and  
PLESSEN ENTERPRISES, INC.,**

*Counterclaim Defendants,*

**Case No.: SX-2012-cv-370**

**ACTION FOR DAMAGES,  
INJUNCTIVE RELIEF AND  
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**UNITED CORPORATION,**

*Defendant.*

**Case No.: SX-2014-CV-287**

**ACTION FOR DECLARATORY  
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

**WALEED HAMED**, as the Executor of the  
Estate of MOHAMMAD HAMED,

*Plaintiff,*

vs.

**FATHI YUSUF,**

*Defendant.*

**Case No.: SX-2014-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

JURY TRIAL DEMANDED

**HAMED'S REPLY AS TO HAMED CLAIM NO. H-9:  
JOHN GAFFNEY'S SALARY, BENEFITS AND BONUS**

On December 19, 2017, Hamed filed his claim designated as H-9: the Partnership should only have to pay 50% of John Gaffney's salary from 2012 to 2016. On December 28, 2017, an opposition was filed in which Yusuf/United said 'he's a great guy, very skilled, and worked 70-80 hours per week.' What they do NOT explain is why the Partnership paid 100% of Mr. Gaffney's **entire** salary for those years. **Yusuf and United paid him not one cent over that time -- yet Yusuf got at least half of his time for those years absolutely free.**<sup>1</sup>

If Mr. Gaffney WAS a full-time, salaried employee of the Partnership as they say now -- why did Yusuf, United and Seaside get TOTALLY FREE accounting for several years? If Mr. Gaffney was solely a Partnership employee, the Partnership should recover the value of that other 50% of his time. It is not **just** the absence of timesheets upon which Hamed's experts relied -- it is the **total absence of any allocation of time for years, of anything to Yusuf/United.** Hamed's expert CPAs reviewed the payment of 100% of Mr. Gaffney's salary by the Partnership (in a report it stated was based on GAAP and applicable accounting rules.) They say what is common sense, that his salary should have been **allocated** between the Partnership and Yusuf/United. See Exhibit 1 [original motion.] The CPAs could not give particulars because there were no timesheets/allocations *at all*. From April 25, 2013 (the date identified in the Winding Up Order) to present, **100%** of his salary and benefits have been charged to the Partnership **with no allocation. Yusuf/United does not contest this.**

Nor do Yusuf and United contest the fact that Mr. Gaffney testified that when he was hired and during his employment, United has unrelated, 'non-grocery store' operations and financial transactions—and that, in addition to working on Partnership matters, or that he did

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<sup>1</sup> Without any timesheets, they NOW make several different statements about what percentage of his time he did work for the Partnership. The only **clear** statement is on page 6 where they state: "Throughout the time the **Partnership was paying 100% of Gaffney's salary**, he worked at least 40-50 hours per week on Partnership matters. . . . If he worked 40-50 hours for the Partnership two things are obvious and Yusuf/United have now admitted: (1) This EXPLICITLY supports the fact that half of his 70-80 hour time he says he worked was going **elsewhere**, and (2) Yusuf/United got that other half of his time **totally free**."

the accounting for those *totally separate* United operations. Thus, a decider of fact cannot order that 100% of his salary be paid by the Partnership—when Yusuf/United admit they received half of his time for 2.5 years TOTALLY FREE. Under all applicable accounting rules and the applicable case law, **there must be some allocation**. The Court entered summary judgment on November 7, 2014 -- but *any* time paid 100% must be allocated.

Moreover importantly, once the Partnership was split up, he then became the **full-time** comptroller for new *United Corporation and New East*—totally separate entities that also had several other operations unrelated to the Partnership. However, despite his being the full-time comptroller and accountant for the New East operation, and several other Yusuf operations, **100% of his salary after April 3, 2014 was charged to the Partnership.**<sup>2</sup> Yusuf paid him **NOTHING**. He was 100% Free. Why should Yusuf get hundreds of thousands of dollars of work for free? A free half-accountant for years.

Again, what is critical here is that Yusuf knew that the allocation between the partnership and separate, United tasks was subject to strong dispute but did not keep records necessary for a *fair* allocation. Under the applicable case law, they can't "create" them now with affidavits and non-contemporaneous statements by counsel in briefs.<sup>3</sup>

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<sup>2</sup> Nothing shows he was also paid a separate, *additional* full salary by United, Plaza Extra-New East or Seaside. For that matter, there is no evidence of any other salary at all.

<sup>33</sup> Yusuf/United now say, at page 6, "Although Hamed claims that he first raised this issue in 2013. . .he points to no record evidence supporting this claim. Hamed's 2/8/16 Sixth Objection (to Judge Ross) notes that he *had* been objecting to this previously.

Indeed, Yusuf has likewise abused his position as the Liquidating Partner in paying John Gaffney. In this regard, **since the Liquidating Partner was appointed, 100% of John Gaffney's salary has been paid by the partnership, even though Gaffney also does extensive accounting work for Yusuf's new company running the Plaza East store since it was severed into a new "Yusuf owned" business in March of 2015.** See Exhibit 1. While there is no doubt that Gaffney has done extensive work for the partnership during this time period, he has also done work that is totally unrelated to the partnership. See Exhibit 1. However, rather than even attempt to allocate his salary between his partnership work and the work he does for

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### **CERTIFICATE OF SERVICE**

This document complies with the page or word limitation set forth in Rule 6-1(e). I hereby certify that on this 28th day of December, 2017, I served a copy of the foregoing by email (via CaseAnywhere ECF) as agreed by the parties, on:

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Yusuf's new store (or other ventures), Yusuf has chosen to pay 100% of his salary from partnership funds. (Emphasis added.)